

Request for Proposals

Solicitation Number F09650-98-R-0207

West Robins Housing Privatization Project, UHHZ 974012

PURCHASE AND SALE CONTRACT

by and between

SECRETARY OF THE AIR FORCE, as Seller

and

[NAME OF PURCHASER], as Purchaser

Dated _____, 199__

Robins AFB, Warner Robins, Georgia

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PURCHASE AND SALE CONTRACT

Robins AFB, Warner Robins, Georgia

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PURCHASE AND SALE CONTRACT

THIS PURCHASE AND SALE CONTRACT (this "Contract") is made and entered into as of _____, 199_, by and between **THE UNITED STATES OF AMERICA represented by THE SECRETARY OF THE AIR FORCE** (the "Secretary"), and **[NAME OF PURCHASER]**, a _____ (the "Purchaser"). The Secretary and the Purchaser may be referred to jointly as the "Parties," and each separately as a "Party."

RECITALS

A. Pursuant to the Solicitation (as defined below) and the Selected Proposal (as defined below), the Purchaser has agreed to become obligated for the design, construction, operation, maintenance, replacement and rehabilitation of a privately-owned rental housing development primarily for use by military personnel and their families assigned to Robins AFB, Warner Robins, Georgia.

B. In accordance with and in furtherance of the Solicitation and the Selected Proposal, the Secretary and the Purchaser hereby agree that, subject to the terms and conditions and for the consideration set forth below, the Secretary shall convey and the Purchaser shall purchase the Land (as defined below).

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties hereby agree as follows:

1. Definitions. The terms defined in this Section 1 and in the Recitals (except as otherwise expressly defined in this Contract or unless the context otherwise requires) for all purposes of this Contract shall have the respective meanings specified in this Section 1 and the Recitals.

"Act" means the 1996 Defense Authorization Act, Public Law 104-106, 110 Stat. 186, Title XXVIII, Subtitle A, Military Housing Privatization Initiative, as amended.

"Applicable Laws" means all federal, state, and local (city, county and otherwise) laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which may be applicable to the Purchaser, the Land, including the structures thereon, and the Improvements, and/or any person located at or near the Land during the term of this Contract whether presently in force or enacted after the Effective Date.

"Authorized Representative" means with respect to all parties under this Contract, an officer, a principal, an agent or other person who is authorized to act on behalf of and whose actions are binding upon that party. As of the date of execution of this Contract, the primary Authorized

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Representative of the Purchaser is _____; and of the Secretary is _____. Any party may designate additional or substitute persons to act as an Authorized Representative on its behalf at any time by a written notice to the other parties.

"Business Day" means any day other than (i) a Saturday, (ii) a Sunday, or (iii) a day on which the federal government is generally closed by statute, regulation or executive order.

"Certificate of Occupancy" means a certificate of occupancy (or the equivalent) to be issued by the Secretary and/or the City in accordance with the Solicitation following the completion by the Purchaser of construction of all or any part of the Improvements.

"City" means the City of Warner Robins, Georgia.

"City Contract of Sale" means the agreement between the City and/or the Warner Robins Downtown Development Authority and the Purchaser pursuant to which City and/or the Warner Robins Downtown Development Authority has agreed to convey the City Exchange Parcel to the Purchaser in consideration for the conveyance by the Purchaser to the City and/or the Warner Robins Downtown Development Authority of the West Robins Exchange Parcel and the satisfaction by the Purchaser of the other terms and conditions set forth therein.

"City Exchange Parcel" means those tracts or parcels of land located in the City of Warner Robins, Georgia, as more particularly described in the City Contract of Sale.

"Closing" is as defined in Section 5.

"Closing Date" is as defined in Section 5.

"Effective Date" means _____, 199__.

"Improvements" means collectively, the Project Improvements and the Opportunity Site Improvements.

"Installation" means Robins AFB, Warner Robins, Georgia.

"Land" means collectively, the Project Parcel, the Opportunity Site Parcels and the West Robins Exchange Parcel.

"Ground Lease" means that certain Lease of Property, dated as of even date herewith, made by and between the Secretary, as lessor and the Purchaser, as lessee, with respect to the Leased Premises, which shall be substantially in the form attached to this Contract as Exhibit G.

"Land Records" means the Office of the Clerk of Superior Court of Houston County, Georgia.

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"Leased Premises" is as defined in the Ground Lease.

"Newly Constructed Improvements" means the 370 housing units to be newly constructed by the Purchaser as part of the Project and the ancillary improvements relating to such new housing units as required under the Solicitation and the Selected Proposal.

"Opportunity Site Improvements" means those improvements to be constructed on each of the Opportunity Site Parcels.

"Opportunity Site Parcels" means those tracts or parcels of land located in the City of Warner Robins, Georgia, more particularly described in Exhibit "B" and shown on Exhibit "B-1." No part of the Project will be located on the Opportunity Site Parcels.

"Parcel" means as applicable, the Project Parcel, an Opportunity Site Parcel or the West Robins Exchange Parcel.

"Project" means a privately-owned rental housing development consisting of at least 670 housing units which exist or are to be constructed primarily for use by military personnel and their families assigned to Robins AFB, Warner Robins, Georgia and the ancillary improvements relating to such housing units as are described in and as are required to be designed, constructed, operated, maintained, replaced and rehabilitated in accordance with the Solicitation, the Selected Proposal and the Ground Lease.

"Project Improvements" means those improvements which exist or are to be constructed on the Project Parcel.

"Project Parcel" means those tracts or parcels of land located in the City of Warner Robins, Georgia, more particularly described in Exhibit "A" and shown on Exhibit "A-1" on which the Project is to be located.

"PUDD Zoning Approval" refers to the approval of the City of Warner Robins, Georgia, and any other applicable state or local government entity, for rezoning of the Land as a planned unit development, all in accordance with the requirements set forth in the Business Arrangement.

"Quitclaim Deed" means a deed executed and delivered by the Secretary to convey the Project Parcel or one of more Opportunity Site Parcels, which shall be substantially in the form attached to this Contract as Exhibit F.

"Repeater Tower Easement" means an easement reserved by the Secretary with respect to a portion of the Land for the purposes of owning, operating and maintaining a repeater tower, as

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more particularly described in Exhibit "D" and shown on Exhibit "D-1."

"Selected Proposal" means collectively the proposal submitted by or on behalf of the Purchaser and selected by the Secretary as the winning proposal in response to the Solicitation, together with the Final Plans, the final construction schedule, the Construction Management Plan, the Operations and Maintenance Plan, and the Management Plan approved by the Government, and including any approved amendments, modifications, and/or supplements.

"Solicitation" means United States Department of the Air Force Solicitation Number F09650-98-R-0207, including any and all amendments.

"Termination and Release of Lease" means a termination and release executed and delivered by the Secretary and the Purchaser to evidence termination of the Ground Lease with respect to all or a portion of the Land, which shall be substantially in the form attached to this Contract as Exhibit I.

"Use Agreement" means the Declaration of Restrictive Covenants and Use Agreement for Military Housing Project to be executed by the Secretary with respect to the Land and to be recorded among the Land Records prior to the conveyance of any portion of the Land as covenants running with the land which shall be substantially in the form attached to this Contract as Exhibit H.

2. Obligation to Sell and Obligation to Purchase. The Secretary agrees to sell and transfer to the Purchaser, and the Purchaser agrees to purchase and accept from the Secretary, upon the terms and conditions set forth in this Contract, all of the Secretary's right, title and interest in and to the Land.

3. Consideration. As consideration for the conveyance of the Land, the Purchaser shall:

a. pay the Secretary a "Purchase Price" of One Dollar (\$1.00) at the conveyance of each Parcel, and such other good and valuable consideration as provided in this Contract;

b. from and after the Closing Date, continue (i) to make housing units in the Project available to military personnel and their families assigned to Robins AFB, Warner Robins, Georgia on preferred terms and on priority basis in accordance with the Solicitation, the Selected Proposal and the Use Agreement and (ii) to otherwise construct, renovate, demolish, operate and maintain the Property in accordance with the terms and conditions set forth in the Solicitation, the Selected Proposal and, as applicable, the Use Agreement;

c. from and after the Closing Date, continue to contribute to the Project, from the income and/or sales or other proceeds generated by each of Opportunity Site Parcels, the amounts required in accordance with the Solicitation and the Selected Proposal.

4. Lease of Land Prior to Closing; Termination of Ground Lease. Pending the

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conveyance of the Land in accordance with terms and conditions of this Contract, the Secretary and the Purchaser shall enter into the Ground Lease. The Ground Lease shall be for a term of 30 years unless sooner terminated in accordance with its terms, including that the Ground Lease shall be terminated with respect to a Parcel upon the conveyance of such Parcel to the Purchaser under this Contract. In order to evidence a termination of the Ground Lease upon the conveyance of a Parcel, the Parties shall execute a Termination and Release of Lease. A Termination and Release of Ground Lease shall be recorded at the Purchaser's expense in the Land Records concurrently with the recordation of the Quitclaim Deed with respect to the applicable Parcel.

5. Time and Place of Closing. Subject to the terms and conditions set forth in this Contract, the closing of the purchase and sale of each Parcel (the "Closing") shall take place within thirty (30) days following the satisfaction of the conditions set forth in Section 10 with respect to such Parcel, on a date mutually acceptable to the Parties (the "Closing Date"); provided, however, that the Secretary may agree to extend any Closing Date to a later date upon the reasonable written request of the Purchaser. The Parties agree that there may be multiple Closings and multiple Closing Dates with respect to the Project Parcel, the West Robins Exchange Parcel and each of the Opportunity Site Parcels.

6. Title.

d. Title to the Land to be conveyed under this Contract at Closing shall be fee simple, good, marketable and the Land shall be free and clear of all liens, encumbrances, easements, reservations, limitations, covenants, conditions and restrictions, other than the following "Permitted Exceptions":

(1) with respect to the Project Parcel only, the Use Agreement, the Secretary's reservation of the Repeater Tower Easement, if not terminated in accordance with the Solicitation and Selected Proposal, the lease between the Secretary and the Army Air Force Exchange Service (the "AAFES Lease");

(2) any and all other liens, encumbrances, easements, reservations, limitations, covenants, conditions and restrictions on the Land arising on or after the Effective Date;

(3) the requirements of any federal, state or municipal laws, ordinances, rules and regulations;

(4) the matters set forth in Exhibit E;

(5) any leases as may be executed by or on behalf of the Purchaser on or after the Effective Date; and

(6) such other items as are agreed to by the Purchaser and the Secretary in

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writing.

e. Purchaser has obtained and reviewed (or has made a decision not to obtain and review) a title report or title insurance commitment from a title insurance company, title attorney or other party satisfactory to Purchaser. Other than as expressly set forth in the applicable Quitclaim Deed, the Secretary makes no representations or warranties about the quality of title to any Parcel and the Secretary shall have no obligations under any circumstance to cure any exceptions to title or other title objections. By its execution of this Contract, (i) Purchaser is deemed to have waived any title exceptions or title objections which are (or would be) disclosed by any such title report or title insurance commitment, (ii) Purchaser is deemed to have conclusively accepted any such title exceptions or objections, and (iii) Purchaser agrees to accept each Parcel subject to any such title exceptions or objections and proceed to Closing as provided in this Contract.

7. Condition of Land; Environmental Matters.

f. The Purchaser shall purchase the Property in its "AS IS," "WHERE IS" condition without any representation or warranty by the Secretary concerning the Property's condition and without obligation on the part of the Secretary to make any alterations, repairs or additions, except as may be otherwise expressly set forth in this Contract. The Secretary shall not be liable for any latent or patent defects in the Land. The Purchaser acknowledges that the Secretary has made no representation or warranty concerning the condition and state of repair of the Land nor any agreement or promise to alter, improve, adapt, or repair the Land, except as may be otherwise expressly set forth in this Contract.

g. Condition 10 of the Ground Lease is hereby incorporated by reference into this Contract as if fully set forth herein.

h. The Purchaser shall comply with all Federal, State, and local laws, regulations, and standards that are or may become applicable to Purchaser's activities on the Land and the Purchaser shall be responsible for obtaining at its cost and expense any environmental permits required for its operations on the Land, independent of any existing permits.

i. The Purchaser shall indemnify, save, and hold harmless the Secretary from any claims for damages, response or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Purchaser, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them, giving rise to Secretary liability, civil or criminal, or responsibility under Federal, State or local environmental laws. This Condition shall survive the expiration or termination of this Contract, and the Purchaser's obligations hereunder shall apply whenever the Secretary incurs costs or liabilities of the types described in this Section 7 or Condition 10 of the Ground Lease.

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8. Secretary's Representations. The Secretary represents that as of the Effective Date:

j. The Secretary has full power and authority to enter into and, subject to the conditions contained in this Contract, to perform the terms and conditions of this Contract, and this Contract constitutes a legal, valid and binding obligation of the Secretary enforceable in accordance with its terms.

k. Subject to the conditions contained in this Contract, neither the execution and delivery of this Contract nor the consummation of the transactions contemplated by this Contract will violate any agreement to which the Secretary is a party or by which the Secretary is bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental agency to which the Secretary is subject.

The above representations shall be deemed repeated at Closing and it shall be a condition to the Purchaser's obligation to close under this Contract that such representations and warranties are true and complete in all material respects.

9. Purchaser's Representations and Warranties. The Purchaser represents and warrants that as of the date of this Contract:

l. The Purchaser is a _____ which is duly organized, validly existing and in good standing under the laws of the State/Commonwealth of _____, and is qualified to transact business under the laws of the State of Georgia, with full power and authority to enter into and to perform the terms and conditions of this Contract, and this Contract constitutes a legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally. The Purchaser has obtained all consents required under the Purchaser's organizational documents with respect to the Purchaser's execution, delivery and performance of this Contract including, without limitation, the consent of the Purchaser's partners/members.

m. _____, _____ of the Purchaser, has the full right, power and authority to execute this Contract on behalf of the Purchaser and, subject to the conditions contained in this Contract, to execute the documents required under this Contract on behalf of the Purchaser. _____ has obtained all consents required under the Purchaser's organizational documents to execute, on behalf of the Purchaser, all documents required to be executed by the Purchaser under this Contract.

n. Neither the execution and delivery of this Contract nor the consummation of the transactions contemplated by this Contract will violate any agreement to which the Purchaser is a party or by which the Purchaser is bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental agency to which the Purchaser is subject.

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o. To the Purchaser's knowledge, there is no claim, action, proceeding or investigation pending or threatened against or involving the Purchaser, which questions or challenges the validity of this Contract or any action taken or to be taken by the Purchaser pursuant to this Contract or in connection with the transaction contemplated by this Contract and the Purchaser knows of no valid basis for any such action, proceeding or investigation.

The above representations and warranties shall be deemed repeated at Closing and it shall be a condition to the Secretary's obligation to close under this Contract that such representations and warranties are true and complete in all material respects.

10. Conditions Precedent to Conveyance of the Land. In addition to satisfaction of the conditions set forth elsewhere in this Contract, the Secretary shall not be obligated to convey any of the Land to the Purchaser unless the following conditions have been satisfied as of the date of conveyance:

p. **General Conditions.** None of the Land shall be conveyed until the following conditions have been satisfied:

(1) The Secretary has received evidence reasonably satisfactory to the Secretary that the Purchaser has received PUDD Zoning Approval and other necessary approvals with respect to the Parcel to be conveyed.

(2) The Purchaser has complied with its obligations under and there is no uncured default which exists with respect to the Solicitation, the Selected Proposal, the Ground Lease, this Contract, any other agreements between the Purchaser and the Secretary, any construction and/or permanent loan financing relating to the Project and the Opportunity Sites and all other documents executed by the Purchaser in connection with the Project and the Opportunity Sites.

(3) The Secretary has received evidence reasonably acceptable to the Secretary that the Purchaser has sufficient financing (debt and equity) to complete the Improvements, if any, which would remain to be completed after the deed conveyance of the applicable Parcel by the Secretary.

(4) The Secretary has complied with 42 U.S.C. 9620 and other legal and policy requirements.

q. **West Robins Exchange Parcel.** In addition to the satisfaction of the General Conditions set forth above, the West Robins Exchange Parcel shall not be conveyed until the following conditions have been satisfied:

(1) The Secretary has received evidence reasonably satisfactory to the Secretary that the Purchaser has satisfied all conditions set forth in the City Contract of Sale or

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otherwise established by the City as preconditions for the conveyance to the Purchaser of the City Exchange Parcel.

(2) The Purchaser has entered into a legally binding agreement that immediately following its receipt of title to the West Robins Exchange Parcel, the Purchaser will convey to West Robins Exchange Parcel to the City, and if requested by the Secretary, the Purchaser, the Secretary and the City have entered into a escrow agreement or other arrangement to facilitate such concurrent conveyance.

r. **Project Parcel.** In addition to the satisfaction of the General Conditions set forth above, the Project Parcel shall not conveyed until the following conditions have been satisfied:

(1) The Purchaser has satisfactorily completed the Newly Constructed Improvements in accordance with the Solicitation, the Selected Proposal and the Ground Lease.

(2) A Certificate of Occupancy as been issued with respect to the Newly Constructed Improvements.

s. **Opportunity Site Parcels.** In addition to the satisfaction of the General Conditions set forth above, the Opportunity Site Parcels shall not conveyed until the following conditions have been satisfied:

(1) The Purchaser has contributed the amounts required with respect to the Opportunity Site Parcel to be conveyed in accordance with the Solicitation and the Selected Proposal and such funds have been deposited for the benefit of the Project in a manner and subject to an arrangement reasonably satisfactory to the Secretary.

[ADD ADDITIONAL CONDITIONS BASED ON SPECIFICS OF
SELECTED PROPOSAL]

11. Conditions Precedent to Acceptance of the Land. The Purchaser shall not be obligated to accept conveyance of the Land from the Secretary unless all of the following conditions have been satisfied as of the date of conveyance:

t. The Secretary has complied with its obligations under the Solicitation, the Ground Lease, this Contract, any other agreements between the Purchaser and the Secretary.

u. Jurisdiction over the Land has been changed, or is in the process of being changed, from exclusive federal jurisdiction to the jurisdiction of the State of Georgia.

12. Conveyance Subject to Use Agreement; Reversion of Title to Secretary Subsequent to Conveyance.

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v. The Land shall be conveyed to the Purchaser subject to the terms and conditions of the Use Agreement.

w. Among other terms and conditions, the Restrictive Covenant shall provide that if the Purchaser breaches the terms and conditions of the Use Agreement and such breach is not cured within the applicable cure period, if any, then the Secretary shall have the right to use the Performance Deposit (as defined in the Solicitation) to cure such breach or at its option to retain the Performance Deposit as partial damages and as its property without any deductions, offset or recoupment whatsoever. In addition to use or retention of the Performance Deposit, the Secretary shall also have the right in its sole discretion to re-enter and take possession of any or all of the Land and to terminate (and revert in the Secretary) the estate conveyed by any Quitclaim Deed to the Purchaser.

x. IT IS THE INTENT OF THE PARTIES THAT THE CONVEYANCE OF THE LAND TO THE PURCHASER SHALL BE MADE UPON, AND THAT THE QUITCLAIM DEED AND THE USE AGREEMENT SHALL CONTAIN A CONDITION SUBSEQUENT TO THE EFFECT THAT IN THE EVENT OF ANY DEFAULT, FAILURE, VIOLATION, OR OTHER ACTION OR INACTION BY THE PURCHASER AS SPECIFIED IN THE USE AGREEMENT, WHICH IS NOT REMEDIED BY THE PURCHASER (OR ANOTHER PARTY ON BEHALF OF THE PURCHASER) TO THE SATISFACTION OF THE SECRETARY WITHIN THE PERIOD AND IN THE MANNER STATED IN THE USE AGREEMENT, THE SECRETARY AT ITS OPTION MAY DECLARE A TERMINATION IN FAVOR OF THE SECRETARY OF THE TITLE, AND OF ALL THE RIGHTS AND INTERESTS IN AND TO THE LAND CONVEYED BY THE QUITCLAIM DEED TO THE PURCHASER AND THAT SUCH TITLE AND ALL RIGHTS AND INTERESTS OF THE PURCHASER, AND ANY ASSIGNS OR SUCCESSORS IN INTEREST TO AND IN THE LAND, SHALL REVERT TO THE SECRETARY.

y. Any reversion of title to the Land in the Secretary pursuant to the provisions of this Contract, the restrictive covenants and quitclaim deed shall:

(2) always be subject to and limited by, and shall not defeat, render invalid, or limit in any way (i) the lien of any mortgage approved in writing by the Secretary pursuant to the Ground Lease, this Contract, the Use Agreement or otherwise prior to the date of such reversion of title in the Secretary or (ii) any rights, remedies or interests provided under the mortgage documents for the protection of the holders of such mortgages; and

(2) include title to any and all improvements which exist or have been constructed and/or are in the process of being constructed on the Land as of the date of such reversion.

z. Within 15 days of written notice from the Secretary of such reversion of title,

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the Purchaser shall provide the Secretary with a deed to the Land or such portion of the Land which has reverted in the Secretary and any and all improvements located on the Land and shall execute and deliver all documents, provide all information and take or forbear from taking such action as may be reasonably necessary or appropriate to achieve the reversion of title. The Purchaser hereby irrevocably appoints the Secretary as the Purchaser's attorney-in-fact to execute and record on its behalf such deed and to execute such other documents and instruments on behalf of the Purchaser as the Secretary, in its sole judgment, shall deem necessary or desirable for the purposes of effectuating the reversion of title and such power shall be coupled with an interest and irrevocable until the expiration or other termination of the Use Agreement; provided that such power shall be exercisable only if the Purchaser fails to deliver the required deed and other documents within 15 days of written notice from the Secretary and

13. Retention of, or Resale of Reacquired Land and Improvements; Disposition of Proceeds.

aa. Upon the reversion of title to any or all of the Land to the Secretary, the Secretary, in its sole discretion and at its sole option, shall have the right to retain title and ownership of any Land so reacquired, or shall the right, but not the obligation, to use good faith efforts to resell any or all of the Land and the Improvements in such manner as the Secretary shall deem appropriate; provided, however, if any Land and the Improvements in which title has reverted in the Secretary are subject to a mortgage which has been approved by the Secretary in accordance with the Solicitation, the Selected Proposal, the Ground Lease or the Use Agreement, and the Secretary makes a decision to sell or lease the Land and Improvements, selection of the purchaser, lessee or other transferee shall be subject to the consent of the holder of such approved mortgage, which consent shall not be unreasonably withheld.

bb. Upon any such resale or lease of the Land and Improvements, the proceeds of such shall be applied in the following order of priority:

(1) First, to reimburse the Secretary on its own behalf for all costs and expenses incurred by the Secretary, in connection with the recapture, management and resale of the Land and the Improvements; all taxes, assessments, and water and sewer charges with respect to the Land; any payments made or necessary to be made to discharge any encumbrances or liens (including the lien of any mortgage approved by the Secretary) existing on the Land at the time of reversion of title in the Secretary or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Purchaser, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements on the Land; any amounts otherwise owing the Secretary by the Purchaser, its successors or transferees.

(2) Second, to reimburse the holder of any approved mortgage for sums advanced to the Purchaser under its mortgage pursuant including all sums advanced and outstanding

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interest thereon and to reimburse any applicable expenses connected with this Contract, but only in those cases where the Land is sold free and clear of the lien of such approved mortgages.

- (3) Third, the balance remaining, if any, to the Purchaser.

14. Closing Requirements.

cc. At Closing, the Secretary shall do the following:

(4) Execute and deliver a Quitclaim Deed with respect to the applicable Parcel.

(5) Execute and deliver the Use Agreement, with respect to the Project Parcel.

(6) Execute and deliver a Termination and Release of Lease with respect to the applicable Parcel.

(7) Execute, acknowledge and deliver, as appropriate, all additional documents which may be reasonably necessary to carry out the provisions of this Contract and to permit the Secretary's conveyance to the Purchaser of the applicable Parcel, including with respect to the assignment and assumption of AAFES Lease, if applicable.

dd. At Closing, the Purchaser shall do the following:

(1) Pay the Purchase Price.

(2) Execute and deliver a Quitclaim Deed with respect to the applicable Parcel.

(3) Execute and deliver the Use Agreement, with respect to the Project Parcel.

(4) Execute and deliver a Termination and Release of Lease with respect to the applicable Parcel.

(5) Assume all duties, from and after the Closing Date, with respect to the ownership, operation and maintenance of the applicable Parcel as provided in the Solicitation and Selected Proposal, and subject to the Use Agreement.

(6) Execute, acknowledge and deliver, as appropriate, all additional documents which may be reasonably necessary to carry out the provisions of this Contract and to

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permit the Purchaser's acceptance of the applicable Parcel, including with respect to the assignment and assumption of AAFES Lease, if applicable.

15. Closing Costs.

ee. The Purchaser shall pay all costs incurred in connection with the Closing, including, but not limited to, its own attorney's fees, the cost of title examination, title commitment and title insurance, the cost of any environmental examination, any city, county and state transfer taxes, any sales tax for property conveyed, any income taxes, and all recordation fees. The Secretary shall pay its own attorney's fees.

ff. From and after the conveyance of a Parcel, the Purchaser shall bear any and all costs associated with the ownership, operation and maintenance of such Parcel and/or Improvements, including without limitation, the payment to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time after such conveyance may be imposed on the Parcel and/or the Improvements.

16. Risk of Loss. From and after the conveyance of a Parcel, (i) the Purchaser shall, in all circumstances and events and without prejudice to any other rights of the Secretary, bear all risk of loss or damage or destruction to such Parcel and related Improvements, including any building(s), improvements, fixtures or other property on such Parcel, arising from any causes whatsoever, with or without fault by the Secretary; and (ii) at a minimum, the Purchaser shall carry and maintain with respect to the Parcel and the related Improvements, at no expense to the Secretary, the insurance required pursuant to the Solicitation, the Selected Proposal and/or the Use Agreement. Neither the conveyance of any Parcel nor anything to contrary in this Contract shall lessen, modify or otherwise affect the insurance requirements with respect to any portion of the Land which remains subject to the Ground Lease.

17. Purchaser's Default.

gg. The following shall constitute defaults under this Contract by the Purchaser:

(7) The Purchaser defaults in the performance of its obligations under this Contract, the Ground Lease, the Solicitation or Selected Proposal, and such default remains uncured following expiration of any applicable notice and cure period. If no cure period is otherwise provided, the Purchaser shall have thirty (30) days after delivery of written notice of default by the Secretary to the Purchaser. If, however, in the reasonable opinion of the Secretary, the time required to return to compliance exceeds the thirty (30) day period, the Purchaser shall not be deemed to be in default if within such thirty (30) day period the Purchaser shall begin the actions necessary to bring it into compliance with the applicable documents in accordance with a compliance schedule agreed to by the Secretary.

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(8) The Purchaser breaches any representation or warranty of the Purchaser contained this Contract, the Solicitation and Selected Proposal or the Ground Lease and such breach has a material adverse impact on the Secretary.

hh. Upon the occurrence of any default by the Purchaser, the Secretary may terminate this Contract, without any cost or liability to the Secretary; provided, however, that the Secretary shall provide the Purchaser with at least sixty (60) days prior written notice of any such termination. In addition, the Secretary shall also be entitled to pursue any and all remedies available at law and/or in equity, including without limitation any and all remedies provided under this Contract, the Solicitation, the Selected Proposal, the Ground Lease and the Use Agreement.

18. Secretary's Default.

ii. The following shall constitute defaults under this Contract by the Secretary:

(1) The Secretary defaults in the performance of its obligations under this Contract, the Solicitation and Selected Proposal or the Ground Lease, and such default remains uncured following expiration of any applicable notice and cure period. If no cure period is otherwise provided, the Secretary shall have thirty (30) days after delivery of written notice of default by the Purchaser to the Secretary. If, however, in the reasonable opinion of the Purchaser, the time required to return to compliance exceeds the thirty (30) day period, the Secretary shall not be deemed to be in default if within such thirty (30) day period the Secretary shall begin the actions necessary to bring it into compliance with the applicable documents in accordance with a compliance schedule agreed to by the Purchaser.

(2) The Secretary breaches any representation of the Secretary contained this Contract, the Solicitation and Selected Proposal or the Ground Lease and such breach has a material adverse impact on the Purchaser.

jj. Upon the occurrence of any default by the Secretary, the Purchaser may terminate this Contract, without any cost or liability to the Purchaser; provided, however, that the Purchaser shall provide the Secretary with at least sixty (60) days prior written notice of any such termination.

19. Termination. The termination of this Contract shall not relieve any party of its obligation to perform any obligations which arose prior to the date of such termination, or which relate to events which occurred prior to such termination, including without limitation, the payment of any amounts due or the delivery of any documentation.

20. Notices. Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Purchaser or the Secretary, shall be sufficiently given and shall be deemed given on the Business Day following the date on which such notice or other communication

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shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below. The Purchaser and the Secretary may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Purchaser:

The Secretary:

with a copy to:

21. General Provisions.

kk. **Successors Bound.** The provisions of this Contract shall extend to, bind and inure to the benefit of the Parties and their respective personal representatives, heirs, successors and assigns, provided that the Purchaser shall be prohibited from assigning all or any part of its right, title and interest under this Contract without the written prior consent of the Secretary.

ll. **Time; Performance of Obligations.** With respect to all obligations of the Purchaser or the Secretary under this Contract, time is of the essence. In the computation of any period of time provided for in this Contract or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next day which is a Business Day. Each party hereby covenants to keep and perform faithfully all of its covenants and undertakings contained in this Contract.

mm. **Brokers.** The Secretary and the Purchaser each represent and warrant to the other that no real estate agent, broker, finder or intermediary of any kind was involved in negotiating the transaction contemplated in this Contract.

nn. **Identification of Government Agencies, Statutes, Programs and Forms.** Any reference in this Contract, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

oo. **Titles and Captions.** All section or subsection titles or captions in this Contract are for convenience only. They shall not be deemed part of this Contract and in no way

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define, limit, extend or describe the scope or intent of any provisions of this Contract.

pp. **Pronouns and Plurals.** Whenever the context may require, any pronoun used in this Contract shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

qq. **Further Action.** The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Contract.

rr. **Applicable Law.** This Contract shall be construed, and the rights and obligations of the Secretary, and the Purchaser under this Contract shall be determined, in accordance with the laws of the State of Georgia.

ss. **Integration.** This Contract constitutes the entire agreement among the parties pertaining to the subject matter of this Contract, and supersedes all prior agreements and understandings pertaining to this subject matter. No covenant, representation or condition not expressed in this Contract shall affect or be deemed to interpret, change or restrict the express provisions of this Contract.

tt. **Approvals.** Any approval or consent of the parties required for any matter under this Contract shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated in this Contract.

uu. **Exhibits.** All Exhibits to this Contract are incorporated in this Contract by reference.

vv. **Conflicts.** The terms of this Contract, the Solicitation, the Selected Proposal and the Ground Lease are intended to be consistent and should be so construed. However, in the event of any ambiguity or inconsistency between the Solicitation, the Selected Proposal, the Ground Lease, and this Contract, this Contract shall be controlling.

ww. **Survival.** The obligations of the parties shall survive Closing and the delivery of a Quitclaim Deed with respect to any or all of the Land.

xx. **Severability.** If any provision of this Contract shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement of the Secretary contained herein shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Secretary to the full extent permitted by law.

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yy. **Multiple Counterparts.** This Contract may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original. This Contract shall be binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

zz. **Delay or Omission Not Waiver; Remedies Not Exclusive.** No delay or omission of a Party to exercise any right or remedy provided under this Contract upon a default of the other party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of or acquiescence in any such default. Every right and remedy given by this Contract or by law to a Party may be exercised from time to time, and as often as may be deemed expedient by such Party. No remedy conferred in this Contract or reserved to the Secretary is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract or now or hereafter existing at law or in equity or by statute.

aaa. **No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Contract. Specifically, none of the provisions of this Contract shall be for the benefit of or enforceable by any creditors of the Purchaser.

bbb. **Amendment.** This Contract shall be amended only by an instrument in writing executed by duly authorized representatives of the Parties.

s. **No Individual Liability.** No covenant or agreement contained in this Contract shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Secretary, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Contract, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.s. **No Individual Liability.** No covenant or agreement contained in this Contract shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Secretary, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Contract, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.s.

No Individual Liability. No covenant or agreement contained in this Contract shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Secretary, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Contract, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

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IN WITNESS WHEREOF, this Contract has been duly executed by the Secretary and the Purchaser as of Effective Date.

[NAME OF PURCHASER]

By: _____

Name: _____

Title: _____

THE SECRETARY OF THE AIR FORCE

By: _____

Name: _____

Title: _____

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EXHIBIT A

Description of Project Parcel

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EXHIBIT B

Description of Opportunity Site Parcels

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EXHIBIT C

Description of West Robins Exchange Parcel

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EXHIBIT D

Description of Repeater Tower Easement

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EXHIBIT E

Permitted Title Exceptions

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EXHIBIT F

Form of Quitclaim Deed

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EXHIBIT G

Form of Ground Lease

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EXHIBIT H

Form of Use Agreement

EXHIBIT I

**Form of Termination and Release of Ground Lease
TERMINATION AND RELEASE OF GROUND LEASE**

THIS TERMINATION AND RELEASE OF GROUND LEASE ("Release") is given as of _____, 199__ by the SECRETARY OF THE AIR FORCE (the "Secretary") and _____, a _____ ("Lessee").

RECITALS

C. The Secretary and the Lessee have entered into a Purchase and Sales Contract dated _____, 199__ (the "Purchase and Sales Contract"), under which the Secretary has agreed to convey and the Lessee has agreed to purchase certain parcels of land situated within the boundaries of Robins Air Force Base, Houston County, Georgia, as more particularly described in attached Exhibit A (the "Property").

D. Pursuant to the Purchase and Sales Contract and pending conveyance of the Property, the Secretary and the Lessee have entered into a Lease of Property with respect to the Property, which Lease (or a memorandum of which Lease) was recorded in the Office of the Clerk of Superior Court of Houston County, Georgia, at Book ____, Page ____.

E. In connection with conveyance of all or a portion of the Property from the Secretary to the Lessee in accordance with Purchase and Sales Contract, the parties have agreed to release and terminate the Lease with respect to the real property described on Exhibit B (the "Released Property").

NOW THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

20. **Partial Release.** The Secretary and the Lessee do hereby release, surrender, terminate and extinguish the Lease with respect to the Released Property and Released Property is hereby fully released and discharged from the effect and operation of the Lease.

21. **Modification.** The Lease is hereby amended by deleting the legal description attached to the Lease as Exhibit A and by inserting in lieu of such description the legal description attached to this Release as Exhibit C.

22. **Full Force and Effect.** This Release in no way affects any other property encumbered by the Lease, and the Lease shall remain in full force and effect except as expressly modified by this Release.

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IN WITNESS WHEREOF, the undersigned have executed this Release as of the date first above written.

Signed, sealed and delivered
in the presence of:

THE SECRETARY OF THE AIR FORCE

Witness

By: _____
Name: _____
Title: _____

Notary Public

My Commission Expires:

(NOTARY PUBLIC SEAL)

Signed, sealed and delivered
in the presence of:

[NAME OF PROJECT OWNER]

Witness

By: _____
Name: _____
Title: _____

Notary Public

My Commission Expires:

(NOTARY PUBLIC SEAL)

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EXHIBIT I-A

Property Description

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EXHIBIT I-B

Description of Released Property

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EXHIBIT I-C

Description of Property Remaining Subject to Lease